

(6) If appeal under paragraph (b) of this section is not permitted, the contested ruling of the presiding officer will be reviewed in the ordinary course of the proceeding as if the appeal had not been made.

(7) If the Motions Commissioner permits an appeal to the Commission, the Secretary will issue an order containing that decision.

(d) *Commission action.* Unless the Commission acts upon an appeal permitted by a presiding officer under paragraph (b) of this section, or by the Motions Commissioner under paragraph (c) of this section, within 15 days after the date on which the presiding officer or Motions Commissioner permits appeal, the ruling of the presiding officer will be reviewed in the ordinary course of the proceeding as if the appeal had not been made.

(e) *Appeal not to suspend proceeding.* Any decision by a presiding officer to permit appeal under paragraph (b) of this section or by the Motions Commissioner to permit an appeal under paragraph (c) of this section will not suspend the proceeding, unless otherwise ordered by the presiding officer or the Motions Commissioner.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 376, 49 FR 21705, May 23, 1984; Order 402, 49 FR 39539, Oct. 9, 1984]

§ 385.716 Reopening (Rule 716).

(a) *General rule.* To the extent permitted by law, the presiding officer or the Commission may, for good cause under paragraph (c) of this section, reopen the evidentiary record in a proceeding for the purpose of taking additional evidence.

(b) *By motion.* (1) Any participant may file a motion to reopen the record.

(2) Any motion to reopen must set forth clearly the facts sought to be proven and the reasons claimed to constitute grounds for reopening.

(3) A participant who does not file an answer to any motion to reopen will be deemed to have waived any objection to the motion provided that no other participant has raised the same objection.

(c) *By action of the presiding officer or the Commission.* If the presiding officer or the Commission, as appropriate, has reason to believe that reopening of a

proceeding is warranted by any changes in conditions of fact or of law or by the public interest, the record in the proceeding may be reopened by the presiding officer before the initial or revised initial decision is served or by the Commission after the initial decision or, if appropriate, the revised initial decision is served.

[Order 225, 47 FR 19022, May 3, 1982, as amended by Order 375, 49 FR 21316, May 21, 1984]

Subpart H—Shortened Procedures

§ 385.801 Waiver of hearing (Rule 801).

In any proceeding in which the Commission is authorized to act after opportunity for hearing, if the parties waive hearing, such opportunity will be deemed to have been afforded by service or publication in the FEDERAL REGISTER of notice of the application or other initial pleading, request, or other filing, such notice fixing a reasonable period of time within which any person desiring to be heard may file a protest or petition. Upon the expiration of such period of time, in the absence of a request for hearing, the Commission may forthwith dispose of the matter upon the basis of the pleadings and other submittals and the studies and recommendations of the staff. A party not requesting oral hearing in its pleadings will be deemed to have waived a hearing for the purpose of such disposition, but will not be bound by such a waiver for the purposes of any request for rehearing with respect to an order so entered.

§ 385.802 Noncontested proceedings (Rule 802).

Noncontested proceedings. In any proceeding required by statute to be set for hearing, the Commission, when it appears to be in the public interest and to be in the interest of the parties to grant the relief or authority requested in the initial pleading, and to omit the intermediate decision procedure, may, after a hearing during which no opposition or contest develops, forthwith dispose of the proceedings upon consideration of the pleadings and other evidence filed and incorporated in the record: *Provided*, (a) The applicant or other initial pleader requests that the

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intermediate decision procedure be omitted and waives oral hearing and opportunity for filing exceptions to the decision of the Commission; and (b) no issue of substance is raised by any request to be heard, protest or petition filed subsequent to publication in the FEDERAL REGISTER of the notice of the filing of an initial pleading and notice or order fixing of hearing, which notice or order will state that the Commission considers the proceeding a proper one for disposition under the provisions of this subpart. Requests for the procedure provided by this subpart may be contained in the initial pleading or subsequent request in writing to the Commission. The decision of the Commission in such proceeding after non-contested hearing, will be final, subject to reconsideration by the Commission upon request for rehearing as provided by statute.

Subpart I—Commission Review of Remedial Orders

§ 385.901 Scope (Rule 901).

(a) *Proceedings to which applicable.* The provisions of this subpart apply to proceedings of the Commission held in accordance with section 503(c) of the Department of Energy Organization Act (42 U.S.C. 7193(c)) to review orders issued by the Secretary of Energy pursuant to section 503(a) of the Department of Energy Organization Act (42 U.S.C. 7193(c)), and initiated by notices of probable violation, proposed remedial orders, or other formal administrative initiating documents issued on or after October 1, 1977, which are contested by the recipient.

(b) *Relationship to other rules.* (1) Where a provision of this subpart is inconsistent with a provision in any other subpart of this part, the provision in this subpart controls.

(2) Subpart F of this part, except Rule 601, does not apply to proceedings under this subpart.

§ 385.902 Definitions (Rule 902).

For purposes of this subpart:

(a) *Contested order* means the remedial order, interim remedial order for immediate compliance or order of disallowance being contested in proceeding pursuant to this subpart;

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(b) *Interim remedial order for immediate compliance* means an interim remedial order for immediate compliance issued pursuant to 10 CFR 205.199D (interim remedial order of immediate compliance);

(c) *Order of disallowance* means an order of disallowance issued pursuant to 10 CFR 205.199E (disallowance);

(d) *Participant* means, as appropriate, the Secretary, the petitioner, and intervenors;

(e) *Petitioner* means a person who has received a remedial order, interim remedial order for immediate compliance, or order of disallowance who notifies the Secretary that he intends to contest the order;

(f) *Remedial order* means a remedial order issued pursuant to 10 CFR 205.199B (remedial orders);

(g) *Secretary* means the Secretary of Energy or his delegate.

§ 385.903 Request for nondisclosure of information (Rule 903).

(a) For purposes of this section, nondisclosure means nondisclosure except as to the participants in the proceeding under conditions provided in paragraphs (d) and (e) of this section.

(b) If any person filing under this subpart claims that some or all of the information contained in a document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in section 1905 of title 18 of the United States Code (18 U.S.C. 1905) (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person:

(1) Must request the presiding officer not to disclose such information, except to the participants in the proceeding under the conditions provided in paragraphs (d) and (e) of this section, which request the person must serve upon the participants in the proceeding;

(2) Must file, together with the document, a second copy of the document from which has been deleted the information for which the person requests nondisclosure and must indicate in the original document that the original